

ORIGINAL
Sylvia H. Rambo

(40)

6-14-02
SC

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

YORK WALLCOVERINGS, INC., :

Plaintiff, : NO. 1:CV-01-0793

v. : (The Hon. Sylvia H. Rambo)

S.A. MAXWELL COMPANY, INC. :
and JAIMA BROWN,

Defendants. :

FILED
HARRISBURG, PA

JUN 13 2002

MARY E. D'ANDREA, CL
PGI
Deputy Clerk

MOTION PURSUANT TO F.R.CIV.P. 62(C) TO STAY
PRELIMINARY INJUNCTION ORDER PENDING APPEAL

1. On June 10, 2002, this Court entered an order granting Plaintiff's Motion for a Preliminary Injunction (the "Order").
2. The Order did not provide for the posting of a bond by Plaintiff even though Rule 65(c) requires that such security be given.
3. In the Memorandum of Law upon which the Order was based, the Court made an error of law with respect to irreparable harm by holding that the four month delay in bringing suit and the eight month delay after suit was commenced in seeking a preliminary injunction did not demonstrate the absence of irreparable harm.
4. This error was further compounded by the use of Defendants' request for a short extension of its time to answer and of Defendants' willingness to mediate as justifications for Plaintiff's delay.
5. Defendants will be filing a Notice of Appeal from the Order and will request that the Court of Appeals expedite the hearing of their appeal as soon as the transcript of the April 30, 2002 hearing is made available.

6. Defendants believe that they have meritorious grounds for an appeal and request that the Order be stayed to avoid rendering their right to appeal a nullity.

7. In addition, Defendants request that the Order be modified to delete therefrom the requirement that they order retailers to take action, since Defendants have no ability to order the retailers to do anything, and, in any event, do not deal directly with retailers.

8. Defendants request that the Order be further modified to delete any requirement that retailers remove any pages from sample books since this would afford Plaintiff permanent rather than preliminary relief.

WHEREFORE, Defendants respectfully request that this Honorable Court grant its motion and stay the preliminary injunction pending appeal.

Dated: June 12, 2002

Respectfully submitted,



Albert Robin (AR-7254)
Robin Blecker & Daley
Attorneys for Defendants
330 Madison Ave
New York, NY 10017
(212) 682-9640

Of Counsel:

Joseph L. Turchi
Rawle & Henderson, LLP
The Widener Building
One South Penn Square
Philadelphia, PA 19107

CERTIFICATE OF SERVICE

It is hereby certified that on this 12th day of June, 2002, a true and complete copy of the foregoing Motion Pursuant to F.R. Civ.P.62(c) to Stay Preliminary Injunction Order Pending Appeal, Defendant's Brief in Support of Motion to Stay Preliminary Injunction Order, Certificate of Non-Concurrence, and proposed Order, are being served by Federal Express upon Kendra D. McGuire, Esq. at Barley, Snyder, Senft & Cohen, LLC, 126 East King Street, Lancaster, PA 17602-2893.



Albert Robin, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

YORK WALLCOVERINGS, INC., :
Plaintiff, :
v. :
S.A. MAXWELL COMPANY, INC. :
and JAIMA BROWN, :
Defendants. :
:

NO. 1:CV-01-0793

(The Hon. Sylvia H. Rambo)

CERTIFICATE OF NON-CONCURRENCE REGARDING DEFENDANTS'
MOTION TO STAY PRELIMINARY INJUNCTION ORDER PENDING APPEAL

I, Albert Robin, Attorney for Defendants, have discussed the Defendants' Motion to Stay Preliminary Injunction Pending Appeal with Plaintiff's Attorney, Kendra McGuire, to determine if she concurs therewith. Kendra McGuire has advised me that she does not concur with Defendants' Motion to Stay Preliminary Injunction Pending Appeal.

Dated: June 12, 2002

Respectfully submitted,



Albert Robin (AR-7254)
Robin Blecker & Daley
Attorneys for Defendants
330 Madison Ave
New York, NY 10017
(212) 682-9640

Of Counsel:

Joseph L. Turchi
Rawle & Henderson, LLP
The Widener Building
One South Penn Square
Philadelphia, PA 19107